

DEPARTMENT OF HEALTH
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FILED
OFFICE OF THE DIRECTOR
DEPT. OF HEALTH

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ENVIRONMENTAL HEALTH DIVISION,
DEPARTMENT OF HEALTH, STATE OF
HAWAII,

Docket No. 21-UST-EA-02

Complainant-Appellee,

vs.

UNITED STATES DEPARTMENT OF THE
NAVY,

Respondent-Appellant.

SCHEDULING ORDER

Upon review of the Emergency Order of December 6, 2021 (EO), the actions and cessations of activity required by the EO, the voluntary stay¹ included within the EO of the effectiveness of those requirements pending an evidentiary hearing before a Hearings Officer (if requested) to begin on December 7, 2021 and the rendering of a final decision following the hearing, the Respondent's timely request for such a hearing in order to contest the EO, the times and dates proposed by the parties for future activity in this contest of those requirements, the

¹ HRS 342L-9 does not *require* that emergency orders issued thereunder be stayed pending the hearing within 24 hours required if requested thereunder, although stays may certainly be applied for.

complexity and importance of this matter, and the urgency of a prompt and appealable resolution thereof, IT IS HEREBY ORDERED as follows:

1. The hearing of this matter shall begin on Monday, December 13, 2021, at 1:00 pm, HST, to commence the delivery of the parties' exhibits to the Hearings Officer and each other, with the parties appearing by Zoom or such other means as will subsequently be determined.

2. The hearing shall continue from day to day until completed.

3. The delivery of parties' exhibits shall be completed no later than Wednesday, December 15, 2021.

4. All other evidence, including witness testimony, shall be presented once the hearing resumes on Thursday, December 16, 2021, beginning at 9:00 am, HST, with the parties and witnesses appearing by Zoom or such other means as will subsequently be determined, and the public able to view and/or listen in by means to be determined.

5. The parties shall use their best efforts to complete their evidentiary presentations by the end of the hearing day on Thursday, December 16, 2021, subject to the Hearings Officer's ability to ask additional written questions and request additional evidence thereafter as he deems appropriate.

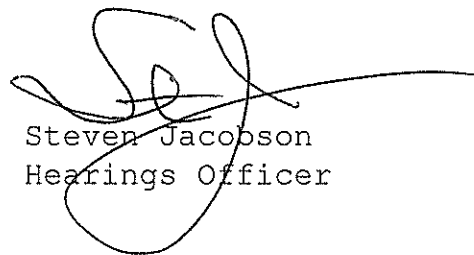
6. Any memoranda/briefs the parties may wish to file shall be filed by 430pm on Wednesday, December 15, 2021.

7. The Hearings Officer would ask that any memorandum/brief filed by the Respondent indicate which part(s) of the EO it is contesting, if not all parts, and that both parties' memoranda/briefs address the questions of (i) what the standard(s) of review should be, and (ii) how "an imminent peril to human health and safety or the environment" should be defined for purposes of HRS 342L-9. The Hearings Officer notes the absence of any such definition in HRS Chapter 342L or HAR Chapter 11-280.1, and that an "imminent hazard" as described in HRS 340E-4 for purposes of HRS Chapter 340E (Safe Drinking Water) is not necessarily the same thing.

8. The Hearings Officer will use his best efforts to have a final decision in this matter rendered no later than 5:00 pm HST on Wednesday, December 22, 2022, and earlier if possible.

9. This Scheduling Order may be amended by Order of the Hearings Officer at any time.

Dated and Served: Honolulu, Hawaii, December 10, 2021.



Steven Jacobson
Hearings Officer